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Proceeding by the Department of Telecommunications and Energy on its own Motion to
Develop Requirements for Mass Migrations of Telecommunications Service End-Users

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I. INTRODUCTION

On April 22, 2002, the Department of Telecommunications and Energy (“Department”) issued an Order Opening Proceeding and Initiation of Mass Migration Collaborative (“Order Opening Proceeding”) in which the Department indicated its intention to put procedures in place to help promote, to the greatest extent possible, the orderly migration of large numbers of customers between competitive local exchange carriers (“CLECs”), or from a CLEC to the incumbent, when a telecommunications service provider discontinues service in all or part of the Massachusetts market. Order Opening Proceeding at 1. To that end, the Department initiated an industry collaborative to adapt for use in Massachusetts the Mass Migration Guidelines recently approved by the New York Public Service Commission (“NYPSC”).¹ Representatives from the following organizations participated in the Massachusetts Mass Migrations Collaborative: Allegiance Telecom of Massachusetts, Inc. (“Allegiance”); the Association of Communications Enterprises (“ACSENT”); AT&T Communications of New England, Inc. (“AT&T”); AT&T Broadband Phone of Massachusetts, LLC (“AT&T Broadband”); Broadview Net Plus; ChoiceOne Communications; the Attorney General of the Commonwealth of Massachusetts (“Attorney General” or “AG”); RNK, Inc. d/b/a RNK Telecom (“RNK”); SBC Telecom; Verizon Communications (“Verizon” or “VZ”); WorldCom, Inc. (“WorldCom”); XO Massachusetts,

¹ The NYPSC Mass Migration Guidelines were developed through a collaborative process in New York and then adopted by the NYPSC, the same process that we have sought to follow here. The NYPSC Mass Migration Guidelines are located at <http://www.dps.state.ny.us/fileroom/doc10880.pdf>.

Inc. ("XO"); and Z-Tel Communications, Inc. ("Z-Tel"). The Massachusetts Collaborative met weekly throughout May 2002. On June 7, 2002, the Collaborative submitted to the Department for its review a set of Draft Guidelines.

II. COMMENTS

By legal notice issued on June 10, 2002, the Department invited comments and petitions to intervene in the adjudicatory phase of the proceeding from all interested parties affected by the issues addressed in the Draft Guidelines. Comments and petitions to intervene were due on or before June 26, 2002.

The Department granted the petitions to intervene of the following carriers: WorldCom; XO; AT&T and AT&T Broadband (jointly, "AT&T"); RNK; Verizon; Allegiance; ASCENT; Z-Tel; and RCN-BecoCom, LLC. The Attorney General submitted a notice of intervention pursuant to G.L. c. 12, § 11E. Comments on the Draft Guidelines were submitted by WorldCom; XO; AT&T; RNK; Verizon; the Attorney General; and Allegiance. All of those submitting comments generally support the Draft Guidelines. Several parties made specific suggestions for modification or clarification of the Draft Guidelines. We discuss each of the issues below.

A. Relationship with NYPSC Collaborative

In its comments, XO states that because the Massachusetts Guidelines are based on the Mass Migration Guidelines adopted by the NYPSC, and the NYPSC recently reconvened its

collaborative to revise and refine the NYPSC Guidelines,² XO suggests that the Department reconvene the Massachusetts Collaborative to determine if any changes made to the NYPSC Guidelines should likewise be made in Massachusetts (XO Comments at 1). AT&T likewise suggests that the Department should monitor the progress of the NYPSC Collaborative, and, if the Department determines that the revised New York procedures should be adopted, that Massachusetts Collaborative members and intervenors have an opportunity to comment on and adjudicate any proposed changes (AT&T Comments at 5). WorldCom suggests there are several changes that have been made in New York that the Department should adopt at this time (WorldCom Comments at 1-2). These changes include: (1) an explicit reference to the Number Portability Administration Center; (2) the addition of language to make clear that customer lists provided by an exiting carrier will be treated confidentially; and (3) the recognition that not all customers of an exiting carriers will require migration (*id.* at 2). Allegiance argues that in New York, a third sample customer notification letter was added to the NYPSC Guidelines, pertaining to customers served by CLECs through Verizon resale, and suggests that similar provisions be considered in Massachusetts (Allegiance Comments at 3).

B. Adoption of Draft Guidelines

XO and Verizon urge the Department to adopt the Massachusetts Collaborative's Draft Guidelines in their entirety (XO Comments at 1; VZ Comments at 1). XO argues that any significant changes to the Draft Guidelines by the Department would upset the extensive

² See Proceeding on Motion of the Commission to Examine the Migration of Customers Between Local Carriers, NYPSC Case 00-C-0188, Notice Clarifying Exit Requirements and Reconvening Collaborative Sessions (issued May 10, 2002).

weighing and balancing of the needs of carriers, consumers, and the Department, that took place during the meetings of the Massachusetts Collaborative (XO Comments at 1). Verizon suggests that as carriers have the opportunity to implement the Guidelines, there may be opportunities to enhance the Guidelines, and, thus, Verizon encourages the Department to provide for periodic review of the Guidelines to ensure that they are efficient for all parties (VZ Comments at 1). WorldCom argues that flexibility is critical in any customer migration situation, and submits that the Guidelines be understood and interpreted as objectives that should serve only as a guide, and not unduly constrain a carrier's ability to effect the creation or termination of a carrier/customer relationship (WorldCom Comments at 1). Conversely, the Attorney General argues that the Department must require carriers to adhere to the Guidelines, and should include the option of conducting special, expedited investigations when carriers cannot, or will not, comply (AG Comments at 2).

C. Definitions

RNK urges the Department to define certain terms included in the Draft Guidelines that are currently undefined (RNK Comments at 1-2). Specifically, RNK suggests that the Department include in the Guidelines definitions for the terms "mass," "market," "significant," "program manager," "project manager," and "migration manager" (*id.*). These definitions are necessary, argues RNK, because it is not clear from the Guidelines when a customer migration constitutes a "mass" migration, and suggests that the Department establish a requirement that any situation involving 500 or more customers would be considered a mass migration (*id.* at 2). As an alternative to setting an absolute number, RNK suggests that carriers be able to approach

the Department for an expeditious determination of whether the Mass Migration Guidelines would or would not apply in a particular situation (id.). RNK further argues that the Draft Guidelines are currently unclear on the roles played by the “program,” “project,” and “migration” managers, and requests that the Department define these roles and how they interface with one another (id.). AT&T suggests that the term “acquiring carrier” should be more clearly defined in the Guidelines (AT&T Comments at 4). This definition is necessary, argues AT&T, in order to differentiate between a carrier contractually bound to take customers of an exiting CLEC, and those carriers that simply choose to market aggressively to the exiting CLEC’s customers without a formal agreement (id.).

D. Department Review of Exit Plans

RNK, Allegiance, and AT&T urge the Department to clarify the procedures connected with a carrier’s filing of an exit plan with the Department (RNK Comments at 3; Allegiance Comments at 2; AT&T Comments at 3-4). RNK suggests that the Department should specify in the Guidelines that the Department’s review of an exit plan will be completed within two business days of either the 90-day notice provided by the exiting carrier, or within two business days of the Department’s determination that a “borderline” migration meets the criteria of a “mass” migration and is therefore subject to the Guidelines (RNK Comments at 3). Allegiance suggests that the Department indicate that the exit plan is to be filed with the Department along with the carrier’s 90-day notice of discontinuance of service (Allegiance Comments at 2). Allegiance further suggests that the exit plan filed with the Department should include a regulatory contact within the company as well as the contact number for the cut-over

coordinator, and that the exit plan should make clear that the burden for maintaining a proper record of the circuit ID falls on the ILEC, not the CLEC (id.). AT&T questions whether it is necessary for an exiting carrier to file with the Department in its exit plan a customer list with CSR information (AT&T Comments at 3). This proprietary information, argues AT&T, should only be shared between the exiting and acquiring carrier, and if required by the Department, should be accorded confidential treatment by the Department (id. at 3-4).

E. Application to DSL Carriers

The Attorney General notes that the Draft Guidelines do not apply to DSL carriers, and argues that, if there are technological differences between DSL customer migrations and other types of migrations, the Department should initiate a new collaborative to create additional guidelines to cover DSL carriers (AG Comments at 2).

F. Cut-Off Date

Allegiance notes that in the Massachusetts Collaborative's Draft Guidelines, the end-user has only 20 days to pick a carrier other than the acquiring carrier, while in New York, an end-user must choose a new carrier 40 days (not 20) prior to the exit date when there is an acquiring carrier, and 30 days prior when there is not (Allegiance Comments at 3). Allegiance suggests that 20 days may not be enough time to convert to a new carrier if an end-user uses all 40 days to make his decision, and suggests that a longer time for conversion should be established (id.).

G. Customer Notification Letters

Allegiance suggests that additional language be included in both customer notification letters included in the Guidelines, in order to be consistent with the New York customer notification requirements (Allegiance Comments at 4). The customer notification letters should include language, argues Allegiance, reminding customers that they are responsible for paying bills rendered by the companies transitioning customers, and are subject to DTE rules regarding suspension or termination of service if bills are not paid (id.).

H. Level of Service

AT&T suggests that the Guidelines should make clear that, when there is an acquiring carrier, a migrated residential customer will be transitioned to a basic service level (AT&T Comments at 2-3). Unless the acquiring carrier is able to migrate residential customers to the exact same level of service at identical rates, carriers may attempt to “shoehorn” customers into calling plans and feature packages that may only exist at higher, a la carte rates (id.).

I. Department Maintenance of Informational Website

AT&T points out that the Guidelines anticipate an active role by the Department in maintaining and updating regularly an informational website pertaining to pending Massachusetts CLEC bankruptcies and other relevant migration information (AT&T Comments at 4-5). Under the Guidelines, CLECs will look to the Department as a conduit of industry information, and AT&T requests that the Department accept this role as anticipated in the Guidelines, as the NYPSC has done (id.).

III. ANALYSIS AND FINDINGS

We thank the members of the Massachusetts Mass Migrations Collaborative for their work developing the Draft Guidelines. The Collaborative's work will help provide customers of an exiting carrier with the opportunity to migrate to another carrier without interruption of service, a result which we have stated is clearly in the public interest.³ Any interruption in telecommunications service as a result of a carrier leaving the market is of serious concern to the affected customers and the Department; and the migration requirements we establish here go far to address these concerns.

The Massachusetts Collaborative's Draft Guidelines are based on the Mass Migration Guidelines recently adopted by the NYPSC, but have been modified to define more clearly the project management processes of the exiting provider, the acquiring provider, and, if necessary, the underlying network provider. The Draft Guidelines also clearly delineate procedures for notification to regulators, the industry, and customers. The Draft Guidelines provide for 90-day advance notice of discontinuance of service to the Department and subsequent notice to the industry, 60-day notice to customers by the exiting carrier, and 30-day notice to customers by the acquiring carrier. We conclude that formal adoption of the Mass Migrations Collaborative's Draft Guidelines (with only minor modifications, as discussed below) will facilitate customer migrations by allowing for smooth transitions of customers, ensure fewer disruptions of telecommunications service, lessen confusion among carriers, and,

³ See Broadview Networks, D.T.E. 02-14, at 1, Vote and Order to Open Investigation (February 14, 2002); Network Plus, Inc., D.T.E. 02-15, at 1, Vote and Order to Open Investigation (February 20, 2002).

therefore, will benefit both the competitive market and consumers. In this Order, we also clarify other issues the parties raised in their comments.

First, we decline to accept WorldCom's suggestion that the Guidelines be interpreted as voluntary objectives to serve only as a guide to Massachusetts carriers. Rather, in order to provide certainty and consistency, we will require all carriers to comply with the mass migration requirements established here. If a carrier is unable to comply with the requirements, it may petition for a waiver from the Department; however, the carrier must demonstrate good cause for its requested waiver. As suggested by the Attorney General, the Department retains the authority to conduct special, expedited investigations if a carrier cannot, or will not, comply. We recognize the benefits of flexibility in our interpretation of the mass migration requirements, and, therefore, we do not accept RNK's suggestion to narrowly define certain terms within the requirements, or to establish a benchmark number of affected customers in order for the requirements to apply. If a carrier plans to exit all or part of the Massachusetts market, and is unsure whether the mass migration requirements apply to it, the carrier may request a prompt, informal determination from the Department's Telecommunications Division. Any request must be made in time sufficient to comply with the notification requirements.

Further, we agree with XO, AT&T, WorldCom, and Allegiance that, because our mass migration requirements are based on the NYPSC requirements, any subsequent changes adopted by the NYPSC may also be appropriate here. However, we decline to put in place a blanket adoption of any future alterations to the NYPSC requirements; rather, we put the onus on Massachusetts carriers, if they choose to do so, to petition the Department to reconvene the

Massachusetts Collaborative to discuss and recommend changes to the Massachusetts mass migration requirements, whether the proposed changes are based on related alterations to the NYPSC requirements or changes based on conditions experienced solely in Massachusetts.⁴ Because the Massachusetts Collaborative did not discuss all of the issues raised in WorldCom's and Allegiance's comments, we decline at this time to adopt those carriers' suggestions to include additional language in the requirements to mirror exactly what is in place in New York or proposed in the reconvened NYPSC Collaborative.

In addition, we clarify the following issues regarding exit plans, but do not conclude that language in the Draft Guidelines must be modified. We note that we will interpret the guidelines in light of the following observations. First, the exit plan filed by the exiting carrier should be filed with the Telecommunications Division at the same time as the 90-day notice to the Department of discontinuance of service. Second, the exit plan should include the appropriate contact names and telephone numbers of individuals within the company who will be directly responsible for managing the company's exit from the Massachusetts market. Third, it remains the responsibility of the exiting carrier, not the ILEC, to identify properly its customers' circuit IDs to aid in orderly transition of those customers. Fourth, carriers must include customer lists with CSR information in their exit plans filed with the Telecommunications Division. The Department recognizes the competitively sensitive nature of this information and will treat the customer lists as proprietary information.

⁴ We also retain the option of reconvening the Massachusetts Collaborative on our own motion.

Also, the Department does not have jurisdiction over retail DSL providers⁵; therefore, we decline to accept the Attorney General's suggestion to extend the Massachusetts mass migration requirements to DSL carriers exiting the Massachusetts market, nor do we convene a separate collaborative to address those issues. In addition, we do not deem it necessary to alter the Draft Guidelines to include language requiring carriers to migrate their acquired customers to the most basic level of service unless an identical level of service at identical rates is available. The purpose of providing advance notice to customers is to afford customers the information and opportunity necessary to act on their own behalf. While it may be inconvenient for some customers to be assigned new calling plans and packages at a higher rate, it may be equally inconvenient for other customers to be transitioned into a calling plan at the most basic level of service. The best protection against customer inconvenience and dissatisfaction is for carriers to provide adequate and timely notice to customers so that customers can arrange for the type of service that best suits their needs. That being said, the Department expects and requires that acquiring carriers act in good faith when transitioning customers. If "shoehorning" of acquired customers into inappropriate calling plans and feature packages proves to be a problem, we may revisit this conclusion.

Finally, rather than provide the informational website envisioned by the Massachusetts Collaborative pertaining to pending CLEC bankruptcies and other relevant migration

⁵ Pursuant to In the Matter of GTE Telephone Operating Cos.; GTOC Tariff No. 1; GTOC Transmittal No. 1148, CC Docket No. 98-79, Memorandum Opinion and Order, FCC 98-292 (rel. October 30, 1998), the Federal Communications Commission has preempted states from regulating retail DSL services. The Department continues to exercise jurisdiction over wholesale DSL services.

information, the Telecommunications Division will provide this information by e-mail to the CLEC contact list. This information will be disseminated more quickly through e-mail and this method will eliminate any concerns with website maintenance and timely web posting.

Therefore, we strike the references to the DTE website from the Draft Guidelines.⁶ As noted in the attached document, Verizon will maintain the e-mail contact list, but each CLEC is responsible for updating and ensuring the accuracy of its contact information.

We have attached to this Order the final requirements for mass migrations in Massachusetts. These requirements will enhance the Massachusetts competitive market and will protect consumers from interruptions in telecommunications service. As changes to the mass migration requirements become necessary, carriers are directed to petition the Department to reconvene the Massachusetts Collaborative to explore the proposed changes.

IV. ORDER

After due notice and consideration, it is

ORDERED: That the attached Mass Migration Requirements, modified to reflect the discussion in this Order, are hereby approved and adopted; and it is

⁶ This is the only modification of substance we make to the Massachusetts Collaborative's Draft Guidelines. To reflect the status of the procedures, we have also substituted the word "requirements" in place of the word "guidelines" in the attached document.

FURTHER ORDERED: That all telecommunications carriers doing business in Massachusetts shall comply with all requirements therein.

By Order of the Department,

_____/s/_____
Paul B. Vasington, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).